

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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JUN 14 1995

In the Matter of )  
 )  
Interconnection and Resale )  
Obligations Pertaining to )  
Commercial Mobile Radio Services )

CC Docket No. 94-54

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

To: The Commission

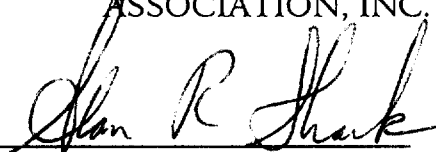
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COMMENTS OF THE  
AMERICAN MOBILE TELECOMMUNICATIONS ASSOCIATION, INC.

Respectfully submitted,

AMERICAN MOBILE TELECOMMUNICATIONS  
ASSOCIATION, INC.

By:



Alan R. Shark, President  
Jill M. Lyon, Dir. Regulatory Relations  
1150 18th Street, N.W., Ste. 250  
Washington, D.C. 20036  
(202) 331-7773

Counsel:

Elizabeth R. Sachs, Esq.  
Lukas, McGowan, Nace & Gutierrez  
1111 19th Street, NW, 12th floor  
Washington, D.C. 20006  
(202) 857-3500

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June 14, 1995

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## SUMMARY

The Association agrees with the Commission's determination not to adopt regulations requiring direct interconnection arrangements among CMRS providers at this relatively embryonic stage of the development of the burgeoning wireless marketplace. Competition will ensure that CMRS interconnection is available to the extent and at such time as the subscribing public demands it. Similarly, the proliferation of competitive service offerings will prevent denial of interconnect access from being used as an anti-competitive device. The Commission is also correct in declining to mandate CMRS roaming obligations unless and until it is determined that the public interest demands that capability on a ubiquitous basis.

AMTA recommends that the Commission adopt a comparable, marketplace-oriented approach in addressing CMRS resale. The agency's long-standing common carrier resale policies were developed in the context of monopoly or duopoly service providers which possessed market power and/or controlled vital bottleneck facilities. Operators in the CMRS marketplace, even at this point in its development, exhibit neither of those characteristics. To the extent resale is intended to enhance competitive opportunities, the CMRS marketplace structure is already designed to accomplish that objective with minimal government oversight.

If the Commission nonetheless elects to adopt a CMRS resale requirement, the SMR service should be exempt from that obligation. The already competitive SMR industry would encounter unique technical, operational and economic problems with mandatory resale. Given the current intensive utilization of SMR spectrum dictated by the FCC's SMR loading requirements, any possible public interest benefit from imposing an SMR resale requirement would be outweighed substantially by the difficulties it would impose on the providers of this service.

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**AMERICAN MOBILE TELECOMMUNICATIONS ASSOCIATION, INC.**

The American Mobile Telecommunications Association, Inc. ("AMTA" or "Association"), in accordance with Section 1.415 of the Federal Communications Commission ("FCC" or "Commission") Rules and Regulations, respectfully submits its Comments in the above-entitled proceeding.<sup>1/</sup> The Notice continues the FCC inquiry into issues relating to the interconnection of commercial mobile radio service ("CMRS") systems, and initiates a Commission examination of CMRS resale obligations.<sup>2/</sup>

The Association endorses the Commission's determination that it would be premature for the FCC to impose, or even propose, regulations requiring direct interconnection arrangements among CMRS providers at this nascent stage of the development of these services. NPR at ¶ 2. There is every indication that the

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<sup>1/</sup> Second Notice of Proposed Rule Making, CC Docket No. 94-54, FCC 95-149 (released April 20, 1995) ("Notice" or "NPR").

<sup>2/</sup> See, Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Service, CC Docket No. 94-54, Notice of Proposed Rule Making and Notice of Inquiry, 9 FCC Rcd 5408 (1994) ("Equal Access NPRM; Interconnection NOI").

marketplace will demand the initiation of such arrangements if they are needed to satisfy the requirements of the subscribing public. The Commission has determined correctly to allow competitive forces in the CMRS community to direct the timing and contractual obligations of interconnection agreements in accordance with the broad policy objectives articulated in the Notice, and recognizing that the agency retains authority to adopt prophylactic measures if they should prove necessary. Similarly, AMTA supports the FCC's related decision not to mandate CMRS roaming at this time, but instead to continue its inquiry into this matter. Id.

However, the Association disagrees with the Commission's tentative conclusion to impose a resale obligation on most CMRS providers. NPR at ¶ 3. As detailed below, the FCC's resale requirements would impose substantial technical and economic burdens on certain CMRS operators without a countervailing public interest benefit. AMTA urges the FCC to reconsider this aspect of its proposal.

## **I. INTRODUCTION**

AMTA is a nationwide, non-profit trade association dedicated to the interests of the specialized wireless communications industry.<sup>3/</sup> The Association's members include trunked and conventional 800 MHz and 900 MHz Specialized Mobile Radio ("SMR") Service operators, licensees of wide-area SMR systems, and commercial licensees in the 220 MHz band. These members provide commercial wireless services throughout the country. They constitute the vast majority of previously private carriers that are or will

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<sup>3/</sup> These entities had been classified as private carriers prior to the 1993 amendments to the Communications Act. See Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI § 6002 (b), 107 Stat. 312, 392 ("Budget Act").

be regulated as CMRS pursuant to the regulatory scheme defined in the Budget Act. The Association participated in the earlier phase of this proceeding, as it has in the variety of rule makings initiated by the FCC to implement those Congressional directives. Thus, AMTA and its members have a significant interest in the outcome of this proceeding.

## **II. THE FCC'S DECISION TO REFRAIN FROM MANDATING CMRS INTERCONNECTION IS CORRECT**

### **A. An Interconnection Obligation is Unnecessary and Would be Premature**

In the Notice, the Commission concluded that it is premature to impose a general interconnection obligation on CMRS providers. NPR at ¶ 29. As the Commission noted, inquiry into technical means and costs of direct CMRS interconnection would be speculative at best due to the rapid changes taking place in the CMRS industry. *Id.* Further, all CMRS users already can communicate with all other network users through interconnection via the Public Switched Telephone Network (PSTN). NPR at ¶ 30. Finally, CMRS market conditions do not warrant an interconnection obligation since robust competition will alleviate any concern that providers will deny interconnection as an anticompetitive measure. NPR at ¶ 31.

AMTA agrees with the Commission's conclusion that a direct CMRS interconnection obligation is unnecessary.<sup>4/</sup> The wireless telecommunications marketplace is poised to deliver a large variety of product and service offerings; however, the technology platform(s) that will support many of those offerings have not

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<sup>4/</sup> AMTA notes that the Commission's conclusion is in agreement with AMTA's position in its Comments on the NOI. See AMTA Comments, CC Docket No. 94-54 (September 12, 1994) at 14.

yet been finalized. Thus, there is no record on which to base a finding that mandatory interconnection obligations are needed. Since interconnection is already available through local exchange carriers (LECs), consumers are not now being denied the benefits of communication with other users. To impose a general interconnection obligation at this stage, tied to a particular technology, would be to limit the development of services that otherwise will be tailored to specific customer and geographic needs.

AMTA, like the Commission, is confident that market forces will be sufficient to ensure that customers receive the interconnected services they desire. With the advent of PCS operations and the reclassification of hundreds of SMR operators and other heretofore private carriers as CMRS providers, the marketplace as a whole can be characterized as highly competitive. Operators may find it commercially advantageous to enter into voluntary interconnection agreements with other providers, as the necessary technology become available. Conversely, however, denial of interconnection would not be an effective anticompetitive measure, since interconnection will remain available through the LEC. A provider refusing to permit interconnection would lose potential revenue rather than enhance its competitive position, an unlikely business decision in an environment of dispersed market power.

AMTA supports the Commission's plan to police interconnection through its continuing enforcement of Sections 201 and 202 of the Communications Act, via the complaint process outlined in Section 208 of the Act.<sup>5/</sup> Until more is known about the likely direction of the CMRS industry in terms of technology, products and services

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<sup>5/</sup> 47 U.S.C. §§ 201- 202, 208.

among various classes of providers, it is impossible to predict where, when or how any interconnection-related violations may occur. Therefore, the complaint process is a reasonable vehicle for collecting information about any situations in which denial of interconnection may be an issue.

In the NPR, the FCC seeks additional comment concerning preemption of state-imposed interconnection obligations. NPR at ¶ 44. AMTA recommends that the Commission exercise its authority to preempt any such regulations, relying on the same policy considerations as are applicable at the federal level. Interconnection obligations would be premature due to uncertainty about likely product and service offerings and would restrict technological development; interconnection is already available through the LEC; and the number of providers in the marketplace will reduce the effectiveness of using denial of interconnection as an anticompetitive device. This is true even if the relevant CMRS marketplace is determined to be local, rather than national, in scope. See NPR at ¶ 34.

In addition, since CMRS is by definition “mobile”, communications often cross state lines, especially those made by subscribers to wide-area networks. New competitors, including broadband and narrowband PCS, as well as 800 MHz and 900 MHz SMR licensees, are expected to operate wide-area systems, either through construction of base stations in more than one state, or by providing roaming or satellite transmission services through arrangements with other carriers. AMTA submits that the Commission must pre-empt state regulation of interconnection in order to ensure the successful development of these competitive networks.



**B. Roaming Services Will be Made Widely Available Through Market Forces**

AMTA supports the Commission's determination that the availability of roaming services should develop through marketplace forces rather than regulation. NPR at ¶ 55. Roaming already is a common business practice in certain CMRS industry segments, even without Commission mandate. Other services face complex, if not intractable, technical difficulties due to incompatibility of equipment. Customer demand, fueling technological development, will best determine which CMRS providers will offer roaming in the future and whether it is even needed as a ubiquitous CMRS service offering.

Voluntary agreements among many cellular operators have already led to roaming availability for millions of cellular customers. The popularity of roaming -- the ability to make or receive a call regardless of location -- likely ensures that PCS operators, other than those serving discrete market niches, also will enter into voluntary arrangements as soon as possible, to the extent they intend to provide competitive service. The need for effective competition will drive technological progress toward intra- and cross-service roaming capability far better than a Commission mandate. As with interconnection, an inflexible standard may impede the development of new technologies.

For other, more mature services, such as SMR, roaming often poses technological difficulties, and compliance with a roaming obligation could be prohibitively expensive. Air interfaces are often incompatible due to widely-differing equipment now in use. Should customer demand make roaming a desirable service for a large part of the CMRS SMR industry, AMTA is confident that the industry will respond positively. However,

most SMR operators would be unable to comply with an FCC roaming obligation without complete replacement of existing equipment. They would be more likely to abandon interconnected service, thus diminishing competition in the CMRS marketplace, an outcome antithetical to the Commission's goal in this proceeding.

### **III. THE FCC SHOULD NOT ADOPT ACROSS-THE-BOARD CMRS RESALE REQUIREMENTS**

#### **A. A Resale Requirement is Not Needed in the Highly Competitive CMRS Marketplace**

The Commission tentatively concluded that it should extend the existing cellular resale requirement to all CMRS providers, absent a showing that requiring resale would not be technically feasible or would constitute an unreasonable economic burden for a particular class or classes of CMRS operators. NPR at ¶ 83. In reaching its preliminary determination, the FCC described a consistent policy of mandating common carrier resale provisions, and its evaluation of the record in the earlier phase of this proceeding.

In its analysis, the Commission defined resale as "an activity in which one entity subscribes to the communications services and facilities of another entity and then reoffers communications services to the public (with or without 'adding value') for profit. NPR at ¶ 60. It then outlined the development of the agency's policies regarding common carrier resale obligations which arose initially in the context of permitting non-facilities based competition in the monopoly, domestic common carrier public switched network services, and was extended to the duopoly cellular service in which wireline

licensees typically had a substantial "headstart".<sup>6/</sup> The NPR noted that denial of resale often (although not invariably) has been found to constitute unjust, unreasonable, and unlawful discrimination in violation of Sections 201(b) and 202(a) of the Communications Act. 47 U.S.C. § 201(b) and 202(a).<sup>7/</sup>

The public policy objective underlying the Commission's resale requirement is the anticipation that it would promote competition, which, in turn, would preclude potential price discrimination, mitigate headstart advantages among licensees, and provide some measure of secondary market (i.e. retail) activity. NPR at ¶ 84. The Commission also identified resellers as prospective market innovators, and noted that resale could increase demand for and traffic on CMRS systems. Id.

AMTA supports the policy goals articulated in the Notice. The Association agrees fully with the agency's assessment that resale has played a vital role in promoting the development of competitive offerings in the monopoly and duopoly bottleneck services in which it has been mandated, and thereby has benefitted the subscribers to those services. AMTA is not convinced that the same approach is needed, or appropriate, in an intensely competitive marketplace such as CMRS. As the number of CMRS systems capable of providing substantially similar services continues to grow, it

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<sup>6/</sup> As described in the Notice, cellular "headstart" referred to the potential competitive advantage enjoyed by the wireline cellular operator which typically was awarded a construction permit and permitted to initiate service substantially before the selectee from among numerous mutually exclusive non-wireline applicants.

<sup>7/</sup> The Commission has determined that resale provisions are not required by the statute under certain defined conditions. See NPR at ¶ 62. Thus, a CMRS resale obligation cannot be premised on inflexible statutory directives.

is not obvious why the Commission believes that regulation will do a superior job of policing the activities of service providers than will the competitive forces of the marketplace itself. The Association is persuaded that, as with interconnection, CMRS resale arrangements should be established by the marketplace rather than government fiat.

It is evident that a competitive marketplace will develop a reasonable resale policy responsive to subscriber demand without any regulatory prodding. For example, as noted in several comments in the earlier stage of this proceeding, the paging industry, which has few barriers to entry and numerous operators serving most communities, has, on its own, adopted resale as an integral part of its distribution chain. NPR at ¶ 68. Since the avowed objective of mandating resale is to enhance competition, it should be a superfluous requirement if the FCC's goal of establishing a robust, competitive CMRS marketplace continues to be successful. Rather than grafting the remnant of a monopoly/duopoly bottleneck market structure on the CMRS industry, the Commission should look to the natural development of the paging business as the more appropriate model for its CMRS resale policies. However, if the Commission nonetheless determines to adopt a CMRS resale obligation, it should exempt the SMR service from that requirement for the reasons described below.<sup>8/</sup>

**B. SMRS Should Be Exempt From any CMRS Resale Requirement**

The Commission has invited parties to provide a showing that mandatory resale

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<sup>8/</sup> Because the Association opposes a mandatory CMRS resale policy, it also opposes any obligation to resell to competitive facilities-based carriers and the reseller switch proposal advanced by NCRA and Comtech/CSI which the FCC also has rejected. NPR at ¶ 95.

would be technically infeasible or economically unreasonable for a specific class of CMRS provider. NPR at ¶ 83. Thus, the FCC already has recognized that there may be substantive distinctions among various CMRS offerings that would justify a different approach to this issue. The SMR industry, in particular, is ill-suited for mandatory resale from a technical, operational and public interest perspective.

Initially, it must be noted that, unlike either the domestic common carrier public switched network or the cellular service, the overall regulatory framework in which the SMR industry developed was one specifically intended to promote a multitude of competitive offerings. Capacity (spectrum) was doled out incrementally to operators based on a demonstration of intensive customer utilization of already authorized channels. The result was that intended by the FCC: a marketplace populated by multiple service providers each of which had achieved a heretofore unprecedented level of utilized system capacity. Thus, this industry does not display any of the characteristics which initially prompted the Commission to adopt common carrier resale policies.<sup>9/</sup>

The SMR industry also faces unique technical and operational problems which dictate against a mandatory resale policy. For example, unlike cellular or public switched network services, SMR operators use a variety of incompatible system formats. In part because subscriber units are not interoperable, there is no industry-wide

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<sup>9/</sup> In fact, AMTA reaffirms in this proceeding its previously stated position that the FCC has defined CMRS too broadly by including traditional SMR operators. These operators have none of the characteristics of, and should not be subject to regulatory treatment applicable to, traditional common carriers which possess market power and, in some instances, control of vital bottleneck facilities. See, e.g., AMTA Comments, GN Docket No. 93-252 (June 20, 1994).

standardized unique subscriber unit identifier (electronic serial number or "ESN" in cellular parlance) assigned at the manufacturer level as there is with cellular and will be with PCS systems. This not only permits easy tracking and billing of each individual subscriber unit, but creates virtually unlimited unit capacity.

The contrast with operations in the SMR industry is striking. All SMR equipment formats have a limited number of unit ID codes available for assignment. This places real world constraints on the practicality of SMR resale opportunities. Additionally, LTR units, one of the more common SMR equipment formats, do not have unique IDs at all. They can be added easily to a system without the knowledge of the system operator. Moreover, it is not possible to deactivate a particular unit from an LTR dispatch fleet. If a single radio is stolen, or cloned, the entire fleet must be reprogrammed to prevent unauthorized operation of that rogue radio. Units using the Motorola format and some EGE radios are assigned unique unit IDs, but these numbers are dealer programmable. There is no ESN with which a particular ID is paired as there is with cellular. Thus, even on these systems, a "unique" ID can be cloned and radios added by a programmer without the knowledge of the SMR provider. Given the amount of fraud even on well-policed cellular systems, it is apparent that highly vulnerable SMR operations could be victimized easily.

This problem is exacerbated because a substantial number of SMR operators continue to rely on flat monthly billing per unit rather than airtime billing for their dispatch-oriented systems. Customers pay a pre-determined monthly fee per radio irrespective of the amount of airtime used on the system. This common business practice

has advantages for both subscribers and operators. Customers know in advance what their communications costs will be, and providers are not required to install one of the many non-standardized and not inexpensive billing packages available to the industry. This, in turn, has enabled operators to keep monthly charges low, a savings which is passed on to the user in the form of extremely cost effective monthly charges.

However, without airtime billing information, it is virtually impossible for system operators to identify unauthorized units on a system. They maintain control of their businesses by knowing their customers, and their customers' operating habits, and by limiting carefully those permitted to program radios for and activate radios on their systems.<sup>10/</sup> This control cannot be maintained if they are required to provide ID code information to any party wishing to resell on the system. An unscrupulous reseller would be able to add an unlimited number of unauthorized, pirate radios to the system, at least until the traffic generated by those units exceeded the system's capacity causing it to fail entirely.

This possibility is not hypothetical. The typical SMR system displays a delicately maintained balance of dispatch and interconnect units sharing a relatively small number of frequencies. Customers are selected based on their anticipated system usage to provide a manageable mix of traffic patterns. For example, most SMR operators do not

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<sup>10/</sup> Like the paging service, the SMR industry has adopted the use of resale on a case-by-case basis. There are numerous voluntary agreements wherein operators agree to sell on one another's systems, or permit parties without their own facilities, but in whom they have a high level of confidence, to resell on their networks. These arrangements are reached on an individual, selective basis for all of the reasons detailed herein.

solicit taxicab or other livery operations despite the relatively large number of units in their fleets. These types of businesses have such intensive, uninterrupted dispatch needs that they effectively commandeer one or more channels throughout the day. This disrupts the normal trunking algorithms and prevents other customers from accessing the system on a reasonable basis. Again, these controls will be lost if parties unrelated to the system operator determine which customers can be accommodated on a particular system. If that party is a competitor hoping to degrade the level of service and thereby divert dissatisfied customers to his own system, that objective could be accomplished easily through a mandatory resale requirement.

In fact, mandatory SMR resale is inherently inconsistent with the Commission's long-standing SMR loading requirements which recently were eliminated for 800 MHz systems, but retained for those operating at 900 MHz.<sup>11/</sup> The SMR industry is one of the more mature of the wireless services. Many of the systems have been operating for ten to fifteen years. During this period, they were required to demonstrate adequate per-channel customer usage or lose the frequency to another operator.<sup>12/</sup> Systems could be expanded only incrementally and then only upon a demonstration that all assigned frequencies were already loaded to capacity. By contrast, resale is predicated on an assumption that there is excess capacity available which could support additional traffic. This typically is not the case on SMR systems which, unlike cellular, PCS or public

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<sup>11/</sup> Third Report and Order, GN Docket No. 93-252, 9 FCC Rcd 7988 at ¶ 194 (1994).

<sup>12/</sup> 47 C.F.R. § 90.631 (1994).



switched network services, have had highly limited capacity and stringent loading requirements. SMRs need additional capacity on which to sell, not additional, unknown parties adding traffic indiscriminately to already heavily loaded systems.

Although the Commission has determined to classify a variety of potentially competitive, but technically disparate, service offerings as CMRS, it also has recognized that there may be instances in which the public interest will be served by adoption of differing regulatory requirements. In AMTA's opinion, this clearly is one of those instances. The Association takes no position on the need to retain the current cellular resale obligation in light of the burgeoning competitive opportunities in the wireless industry, but urges the Commission to refrain from imposing comparable requirements on SMR operators for the technical and economic reasons described herein.

#### **IV. CONCLUSION**

For the reasons described above, AMTA urges the Commission to proceed expeditiously to complete this proceeding, consistent with the recommendations detailed herein.

## **CERTIFICATE OF SERVICE**

I, Cheri Skewis, a secretary in the law office of Lukas, McGowan, Nace & Gutierrez, hereby certify that I have, on this 14th day of June, 1995, placed in the United States mail, first-class postage pre-paid, a copy of the foregoing Comments to the following:

- \* Chairman Reed E. Hundt  
Federal Communications Commission  
1919 M Street, NW, Room 814  
Washington, DC 20554
- \* Commissioner James H. Quello  
Federal Communications Commission  
1919 M Street, NW, Room 802  
Washington, DC 20554
- \* Commissioner Andrew C. Barrett  
Federal Communications Commission  
1919 M Street, NW, Room 826  
Washington, DC 20554
- \* Commissioner Rachelle B. Chong  
Federal Communications Commission  
1919 M Street, NW, Room 844  
Washington, DC 20554
- \* Commissioner Susan Ness  
Federal Communications Commission  
1919 M Street, NW, Room 832  
Washington, DC 20554
- \* Kathleen M.H. Wallman, Chief  
Common Carrier Bureau  
Federal Communications Commission  
1919 M Street, NW, Room 500  
Washington, DC 20554
- \* Regina Keeney, Chief  
Wireless Telecommunications Bureau  
Federal Communications Commission  
2025 M Street, NW, Room 5002  
Washington, DC 20554

- \* Ralph Haller, Deputy Chief  
Wireless Telecommunications Bureau  
Federal Communications Commission  
2025 M Street, NW, Room 5002  
Washington, DC 20554
- \* Gerald Vaughan, Deputy Chief  
Wireless Telecommunications Bureau  
Federal Communications Commission  
2025 M Street, NW, Room 5002  
Washington, DC 20554
- \* Rosalind K. Allen, Chief  
Commercial Wireless Division  
Wireless Telecommunications Bureau  
Federal Communications Commission  
2025 M Street, NW, Room 5202  
Washington, DC 20554
- \* David Furth, Deputy Chief  
Commercial Wireless Division  
Wireless Telecommunications Bureau  
Federal Communications Commission  
2025 M Street, NW, Room 5202  
Washington, DC 20554
- \* Robert McNamara, Chief  
Private Wireless Division  
Wireless Telecommunications Bureau  
Federal Communications Commission  
2025 M Street, NW, Room 5322  
Washington, DC 20554
- \* John Cimko, Jr., Chief  
Policy Division  
Wireless Telecommunications Bureau  
Federal Communications Commission  
1919 M Street, NW, Room 644  
Washington, DC 20554
- \* William E. Kennard, Esq.  
General Counsel  
Federal Communications Commission  
1919 M Street, NW, Room 614  
Washington, DC 20554

Robert S. Foosaner, Esq.  
Larry Krevor, Esq.  
Nextel Communications, Inc.  
800 Connecticut Avenue, NW, Suite 1001  
Washington, DC 20006

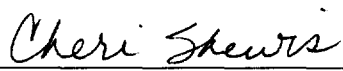
Mary Brooner, Esq.  
Motorola, Inc.  
1350 Eye Street, NW, Suite 400  
Washington, DC 20005

Emmett B. Kitchen  
President  
PCIA/NABER  
1501 Duke Street, Suite 200  
Alexandria, VA 22314

Mark Crosby  
President and Managing Director  
ITA/CICS  
1110 North Glebe Road, Suite 500  
Arlington, VA 22201

Michael Carper, Esq.  
Vice President & General Counsel  
OneComm Corporation  
4643 S. Ulster Street, Suite 500  
Denver, CO 80237

Jeffrey R. Hultman  
President, Director and CEO  
Dial Page, Inc.  
301 College Street, Suite 700  
Greenville, SC 29603-0767

  
Cheri Skewis

\* Via Hand-Delivery